

**Hogan
Lovells**

May 16, 2016

BY CM/ECF

Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse, Room 5523
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *EarthReports, Inc. v. FERC*, No. 15-1127 — Argued April 19, 2016

Dear Mr. Langer:

We write in response to EarthReports's May 10 letter. EarthReports claims that the Commission's draft environmental impact statement (EIS) for the Atlantic Sunrise Project, FERC Docket No. CP15-138-000, supports its arguments.¹ That is not so, for three reasons.

First, EarthReports's attempt to use later EISs to impugn the Commission's environmental assessment in this case misunderstands this Court's review. The Court's analysis is limited to "assessing the record that was actually before the agency." *Association of Private Sector Colleges & Univs. v. Duncan*, 681 F.3d 427, 441 (D.C. Cir. 2012). FERC's draft analysis in a different case in May 2016 can say nothing about the adequacy of FERC's final analysis in this case. That rule applies with particular force here; at the time the Commission considered the Cove Point Liquefaction Project, the Atlantic Sunrise Project's application had not even been filed. J.A. 696-697.

Second, EarthReports overstates the draft EIS's analysis. The draft contains a back-of-the-envelope estimate of how many typical wells might be needed to supply the volume of gas to be transported by the Atlantic Sunrise Project. That is

¹ The full draft EIS is available from the Commission's website at <http://goo.gl/9jqjIL>.

nothing like the expansive analysis of the environmental effects of gas production EarthReports requested here (*see* J.A. 686), and, in any event, is so vague that it would not help FERC “ensure that environmentally informed decisions are made” regarding the Liquefaction Project. *Defs. of Wildlife v. Andrus*, 627 F.2d 1238, 1243 (D.C. Cir. 1980).

Finally, the draft EIS is consistent with the Commission’s findings in this case. The draft EIS concludes (at 4-263) that upstream impacts from Marcellus Shale development are not within the Commission’s jurisdiction, not directly related to the project, and need not be analyzed—even with respect to a pipeline connected to Marcellus production and intended to transport Marcellus production. FERC reached the same conclusion here (J.A. 300-301)—and here, of course, the Liquefaction Project has a far more attenuated relationship to any specific gas production. *See* FERC Br. 32-48; Dominion Br. 11-26.

Respectfully submitted,

/s/ Catherine E. Stetson

J. Patrick Nevins

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cc: All counsel of record (via CM/ECF)